

**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE CEMETERY AND FUNERAL BUREAU
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement of: Case No.: A1 2009 332

JOAL JEFFREY ZRELAK

Funeral Director License No. FDR 982

Petitioner.

DECISION AFTER PETITION FOR REINSTATEMENT

This matter came before the Director of the Department of Consumer Affairs (Department) for the Cemetery and Funeral Bureau (Bureau) by submission of a Petition for Reinstatement, dated October 26, 2018, by Petitioner Joal J. Zrelak. Petitioner seeks to have his Funeral Director's license reinstated by the Bureau. In accordance with Government Code section 11522, the parties were afforded an opportunity to submit written argument on or before December 31, 2018.

On December 28, 2018, written opposition to the Petition for Reinstatement was filed by the Attorney General's Office. Petitioner's written argument in support of his petition was filed with the Bureau on December 11, 2018.

The Director, having reviewed and considered the parties' evidence and written argument, hereby denies the petition.

FACTUAL FINDINGS

License and Criminal History

1. On August 25, 1997, the Bureau issued Funeral Director License Number FDR 982 to the Petitioner. On August 31, 2008, Petitioner's Funeral Director License expired and has not been renewed.

2. On or about April 15, 2010, the Bureau filed Accusation No. A1 2009 332 against the Petitioner, as the result of Petitioner's July 14, 2009, felony conviction for elder fraud in the criminal matter entitled *The People of the State of California v. Joal Jeffery Zrelak* (Superior Court Los Angeles County, 2009, Case No. BA352299). Petitioner's misconduct violated Penal Code section 368, subdivision (d), and involved the theft of insurance premium funds from five

elderly victims. Petitioner was sentenced to four days in jail, placed on five years of formal probation, and ordered to pay restitution in the amount of \$23,788.¹

3. On or about October 21, 2010, and March 9, 2011, Petitioner was served by certified and regular mail, a copy of Accusation No. A1 2009 332. Despite the Bureau effectuating service of the Accusation at the Petitioner's address of record, Petitioner failed to file a Notice of Defense with the Bureau.

4. On May 25, 2011, Petitioner's Funeral Director License Number FDR 982 was ordered revoked by way of a Default Decision and Order (Order) issued by the Department's then Deputy Director of Legal Affairs, Doreathea Johnson.

5. In addition, the Order found the Bureau's costs of investigation and enforcement in this matter to be \$3,455. To date, Petitioner has failed to provide any cost reimbursement to the Bureau pursuant to Business and Professions Code section 125.3.

6. On July 30, 2014, Petitioner's felony conviction was reduced to a misdemeanor and dismissed pursuant to Penal Code section 1203.4.

Petition for Reinstatement

7. On November 1, 2018, the Bureau received from Petitioner a Petition for Reinstatement of his Funeral Director License Number FDR 982. Petitioner attached the following documentation in support of his petition:

- a. The cover page of the May 25, 2011, Default Order;
- b. A copy of Accusation No. A1 2009 332;
- c. A compilation of positive Yelp reviews regarding his employment at McCormick & Son Mortuaries; and
- d. A copy of a July 30, 2014, Order for Dismissal in Los Angeles Superior Court Case No. BA 352299.

8. Further, Petitioner submitted a declaration from his attorney, Emanuel Thomas, entitled "Basis for Reinstatement," which declared in relevant part:²

Since Petitioner's aforementioned incident, he has maintained continuous employment with reputable funeral establishments, treating the families he serves with dignity, respect and has continued to exceed their expectations. He has lived an upstanding life since then and will continue to live his life with integrity and respect for all.

[¶]...[¶]

¹ Los Angeles County Probation Department (Department) records indicate this amount was reduced. The Department confirmed Petitioner paid \$5,700, and other court-ordered fees, totaling \$11,304.

² Mr. Thomas's declaration is set forth without edits for spelling, grammar, and punctuation.

Since then, it has been over four years since the felony conviction was reduced to a misdemeanor and ultimately dismissed and vacated on July 30, 2014 by the Los Angeles Superior Court of California.

[¶]...[¶]

Petitioner has received praise from the families he has served evidenced in the form of positive reviews in both articles and Yelp reviews.

9. Petitioner contends in the background facts section of his November 1, 2018, petition and in his December 11, 2018, written argument that, "the Bureau made multiple attempts to serve [the Petitioner] however the Petitioner was unable to be served."

10. By way of his written argument, Petitioner claims to have "faithfully complied...[with] all required [criminal] sentencing and restitution requirements." Notably, however, Petitioner's written argument does not touch upon his efforts toward rehabilitation, nor does his written argument provide any assurance that his behavior will not be repeated if he is reinstated by the Bureau. Petitioner also failed to articulate why he has not paid any cost reimbursement to the Bureau, as ordered on May 25, 2011.

11. Deputy Attorney General (DAG), Kevin J. Schettig timely filed an Opposition to the Petition for Reinstatement with the Bureau on December 28, 2018, recommending that Petitioner's request for reinstatement be denied in furtherance of public protection.

LEGAL CONCLUSIONS

Burden/Standard of Proof

1. Government Code section 11522 provides, in pertinent part, the following:

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement.

2. Business and Professions Code section 7601.1 states:

Protection of the public shall be the highest priority for the Cemetery and Funeral Bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

3. In a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and is therefore entitled to have his licensed restored, and not on the Bureau to prove the contrary. (*Flanzer v. Board of Dental*

Examiners (1990) 220 Cal. App. 3d 1392, 1398.) Petitioner must bear in mind that as an applicant for reinstatement he, "is not in the position of an untried newcomer, but a fallen licentiate." (*Ibid.*) "It is elementary that a person seeking restoration of a revoked license has no greater rights than a person seeking an original license." (*Housman v. Board of Medical Examiners* (1948) 84 Cal. App. 2d 308, 312.) Moreover, it is reasonable, "that the person seeking reinstatement...should be required to present stronger proof of his rehabilitation." (*Housman, supra*, at p. 315.)

4. In seeking reinstatement, petitioner bears a heavy burden of proving rehabilitation. (*Hippard v. State Bar* (1989) 49 Cal. 3d 1084, 1091-1092.) Petitioner carries the burden to establish by clear and convincing evidence that he is entitled to the requested relief. (*Ibid.*; *Flanzer v. Board of Dental Examiners, supra*, 220 Cal. App. 3d 1392, 1398.) "The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue." (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1086 (dis. opn. of Lucas, C.J.)) The more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be. (*In re Menna* (1995) 11 Cal.4th 975, 987; see *In re Nevill* (1985) 39 Cal.3d 729, 735; *Roth v. State Bar* (1953) 40 Cal.2d 307, 313; *In re Gossage* (2000) 23 Cal.4th 1080, 1096.)

5a. Petitioner applied for reinstatement pursuant to Government Code section 11522. Nonetheless, the Bureau's regulations governing license reinstatement under section 11522 are instructive here. California Code of Regulations, Title 16, section 1253.5, subdivision (b) provides the following:

When considering a petition for reinstatement of a license under the provisions of Section 11522 of the Government Code, the bureau shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in Section 1253 of this article.

5b. The criteria specified in Title 16, section 1253 are:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(d) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(e) Evidence, if any, of rehabilitation submitted by the applicant.

6a. Petitioner's July 14, 2009, felony conviction for elder fraud is very serious and troubling in that Petitioner targeted a vulnerable population who were merely seeking to purchase life insurance. The evidence establishes that Petitioner stole the insurance premium funds from five elderly victims, after representing to his victims that he would obtain such life insurance policies on their behalf. (See Factual Finding 2.) Petitioner's unlawful acts are inimical to the qualifications, functions, and duties of a licensed funeral director. In contrast, Petitioner has complied with the terms and conditions of his criminal probation, and has not committed any subsequent fraudulent acts that could serve as grounds for denial since the imposition of revocation of his funeral director license on May 25, 2011. In addition, the record indicates that Petitioner's felony conviction was subsequently reduced to a misdemeanor, and dismissed pursuant to Penal Code section 1203.4 on July 30, 2014. (See Factual Finding 6.)

6b. The Director is mindful and acknowledges that Petitioner is making efforts and strides towards putting this most unpleasant episode behind him. Petitioner's actions are to be commended. On the other hand, since persons under the direct supervision of judicial or correctional authorities must behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage, supra*, at p. 1099.)

6c. Furthermore, "a dismissal under section 1203.4 ... is in no way equivalent to a finding of factual innocence ... [and] does not purport to render the conviction a legal nullity." (*Skulason v. California Bureau of Real Estate* (2017) 14 Cal. App. 5th 562, 568.) Rather, the statute, "simply authorizes a court to grant relief to individuals who successfully complete the terms of probation by mitigating some of the consequences of conviction." (*Ibid.*) While the Petitioner lays stress upon the fact that he has obtained an Order of Dismissal pursuant to Penal Code section 1203.4, that order in itself does not satisfy the burden resting on him. (*Housman, supra*, at p. 318.)

7a. Rehabilitation is not an event but rather a process. It is a concept that must be evaluated and assessed on multiple levels. To that end, what is not attached to Petitioner's request for reinstatement is also significant. Specifically, Petitioner did not submit a personal statement or character reference letters with his petition demonstrating his changed behavior and reliability that would assist the Director in determining his rehabilitation. (See Factual Finding 10.) Furthermore, a condition precedent for establishing rehabilitation is a mature understanding of the harm done and remorse for one's actions. Quite simply, one must accept responsibility for the misconduct and demonstrate an appreciation for why it is wrong.

7b. In the instant petition, Petitioner's failure to take responsibility or acknowledge the gravity of his prior conduct, including his failure to express sympathy toward the victims of his criminal behavior suggests that he is not truly remorseful. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal. 3d. 933, 940.) Indeed, Petitioner attempts to demonstrate his rehabilitation by submission of favorable Yelp reviews with his current petition. (See Factual Finding 8.) The Director finds the Yelp reviews unpersuasive, considering that there is no indication the reviewers knew of Petitioner's prior misconduct.

8a. Through his counsel, Petitioner suggests in both his November 1, 2018, Petition for Reinstatement and his December 11, 2018, written argument, that the Bureau failed to lawfully effectuate service of Accusation No. A1 2009 332, on the Petitioner. (See Factual Finding 9.) However, review of the administrative record does not support Petitioner's claim. (See Factual Findings 3 and 4.) And, in any event, more than seven years have lapsed without Petitioner pursuing any legal challenge to the May 25, 2011, Order.

8b. Moreover, during this same period, Petitioner has failed to pay any of the \$3,455 in enforcement and investigation costs to the Bureau.

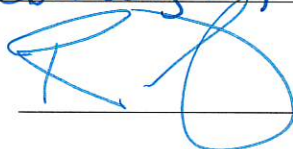
9. Accordingly, Petitioner has made some progress. However, in light of the troubling acts he committed, Petitioner must present strong proof of rehabilitation to the Department and the Bureau. Thus, to obtain reinstatement of his license, Petitioner had the burden of establishing that he has been rehabilitated and that he does not pose a risk to the public interest, safety or welfare. On this record, he has not met that high standard. Therefore, cause exists to deny the petition.

ORDER

The Petition for Reinstatement of Funeral Director License Number FDR 982, filed by Petitioner Joal J. Zrelak, is hereby **DENIED**.

This decision shall become effective on February 21, 2019.

DATED: January 22, 2019.



RYAN MARCROFT
Deputy Director, Legal Affairs Division
Department of Consumer Affairs